

organisms selected from the group consisting of *Phaffia rhodozyma* and *Haematococcus pluvialis*. This language is not new matter and is recited extensively throughout the specification, for example at the middle of page 8. The new claims make the rejections moot and Applicants respectfully request reconsideration and allowance.

Informalities in the Specification

On page 2, item 3 of the Office Action, the Examiner has objected that references in the specification, as amended, to SEQ ID Nos. are incorrect. In response, the specification has been amended to describe the correct SEQ ID Nos. On page 2 the Examiner has acknowledged that a certified copy of the application has not been filed. The copy is being sent and will be filed as soon as it is received.

Rejection Under 101

On page 3, item 4, the Examiner has rejected claims 1 and 2 as being drawn to non-statutory subject matter. Applicants have cancelled claims 1 and 2. New claims 6-10 indicate explicitly (claims 6-9) or implicitly (claim 10) that the DNA is purified and isolated, as suggested by the Examiner. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

Rejection Under 112 Second Paragraph

On pages 3-6 the Examiner has rejected all claims on indefinite grounds because of the recited terms (i) hybridizes, (ii) substantially, (iii) having characteristic, (iv) characterized by, (v) increasing and (v) higher. In response, Applicants have removed these terms by canceling the claims and presenting new claims that do not recite these terms. Reconsideration and removal of this rejection is requested.

Rejection Under 112 First Paragraph

On pages 6-7 the Examiner has rejected the claims on enablement grounds because "the specification ...does not reasonably provide enablement for all possible polynucleotides that 'hybridize[]' to such polynucleotides." The new claims do not recite "hybridizing" and the Examiner is respectfully requested to remove this rejection.

Rejection Under 102

On page 8, the Examiner deemed that claims 1 and 2, which recited hybridization, are anticipated by Anderson et al., stating that Anderson's DNA would hybridize "to the DNA set forth in SEQ ID Nos: 4 or 5 under appropriate conditions." Applicants do not comment on the Examiner's conviction about the ability of claimed DNA to hybridize, but point out that the new claims do not recite hybridization. Accordingly, the Examiner is

Serial No.: 08/737,319

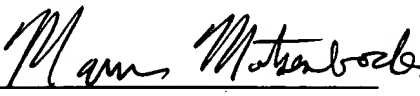
respectfully requested to remove this rejection. Applicants further point out that Anderson's IPP isomerase is from a different organism (*Saccharomyces cerevisiae*) than that recited (*Phaffia rhodozyma* and *Haematococcus pluvialis*) by the new claims. The Examiner also is respectfully requested to remove this rejection because the new claims do not recite DNA of *Saccharomyces*.

CONCLUSION

In view of the foregoing, it is respectfully urged that the present claims are in condition for allowance. An early notice to this effect is earnestly solicited. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned at the number shown below.

Respectfully submitted,

November 16, 1998
Date


Marvin A. Motsenbocker
Registration No.: 36,614

FOLEY & LARDNER
Suite 500, 3000 K Street, N.W.
Washington, D.C. 20007-5109
Phone: (202) 672-5300
Fax: (202) 672-5399

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY DEFICIENCY OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 19-0741.